

City Council of the Mayor and Council of New Castle
Special Council Meeting: Town Hall
201 Delaware Street – New Castle
Friday – January 29, 2010 – 3:30 p.m.

Present:

Council President William Barthel
Councilperson John Cochran
Councilperson John Gaworski
Councilperson Teel Petty

Absent:

Councilperson Ted Megginson (Excused)

Also present:

Mayor John F. Klingmeyer, City Administrator Cathryn Thomas

Council President Barthel reported that the reason for this special meeting of the City Council was to discuss the ARRA (Federal Stimulus) Green Project Reserve projects, which are three separate stormwater capital improvement projects within the City.

The construction bids have been received and reviewed and for two of the three projects are significantly in excess of the original estimate provided by the engineer. For the remaining project, the construction bid was significantly lower than the estimate. The net impact of the total costs for all three projects is a difference of an increase of \$388,127.

The chart below provides details:

Project Cost - Budget vs.	Buttonwood	Stormwater	Washington	
Project Cost w/ Bids +	Dike	Management	Park	
Increased Administrative Cost		Ponds		
Project Cost - Budget (per DNREC Agreement)	\$442,500	\$250,000	\$630,000	\$1,322,500
Project Cost w/ Bids	\$888,581	\$437,546	\$384,500	\$1,710,627
Difference (+ / -)	-\$446,081	-\$187,546	\$245,500	-\$388,127

The City requested that DNREC approve the loan amount be increased from the original \$1,322,500 to \$1,710,627. The advice from City Solicitor Roger Akin on the increase in the loan is that it would be permissible under the Charter, so long as the net amount of the

loan to be paid back through City tax dollars did not exceed that which was approved by the voters in the referendum. The advantage to the City of having the increased amount in the loan is that it would be under the same terms as the original amount – that is half would be forgiven and the remainder, \$194,000, would be repaid over a five year period at an interest rate of 2 percent.

Therefore, Council President Barthel had approached the Trustees of the New Castle Common to see if they would be willing to cover the overage. In a Trustees Committee meeting, a commitment was made from the Trustees that they would cover the \$194,000 overage.

Additionally, the City has been informed that the increased loan amount had been approved in a recent DNREC committee meeting.

Mr. Bruce Jones of Greenstone Engineering addressed the Council concerning the bids received for the projects. He noted this is a new grant program and this is the first time he and others involved had been working with it, having no prior experience. Initially, 12 projects in Delaware were approved for funding through the grant program. Only seven, however, continue to move forward at this point, as the five others were over the initial budgets.

To secure the funding, Federal standards had to be met, and they are very stringent. There were also matters to deal with relative to Federal reporting requirements and wage rates.

Finally, about three-quarters of the way through the process, it was anticipated that the costs for the two projects were going to be over the original estimates, and New Castle City Building Official Jeff Bergstrom was aware of this. Inquiries were made at the time to Mr. Terry Deputy of DNREC, to see if more loan/grant money could be approved for the New Castle projects. The answer at that time was no. The most recent approval for the added grant and loan funds is money from the Clean Water Advisory Council.

Mr. Jones further explained that the original cost estimates were compiled seven to eight months in advance of the bid openings. Then, for the bid, the improvements relative to the Buttonwood subdivision were divided into two sub-projects: (1) Flood Mitigation for the Buttonwood Dike Project, and (2) Buttonwood Nutrient Removal and Habitat Enhancement.

The scope of the Buttonwood project involving the tide gate was significantly altered when the Army Corps of Engineers and DNREC insisted on the tide gates being encased in a concrete box. The City is obligated to meet these standards, as permits for the projects are issued by one or both of these agencies. This item alone increased the estimated project cost by nearly \$350,000.

Councilperson Petty questioned if the tide gate design being insisted upon is that much better than what had originally been designed for the project. Mr. Jones said he argued

vigorously that the original design was satisfactory, however in the end the opinion of the officials representing the permitting agencies won out.

The unanimous consensus of City Council members was to continue to move forward with the projects, expecting that half of the increase of the total project costs will be forgiven as part of the increased loan, which now totals \$1,710,627, and that the other half of the increase, in the amount of \$194,000, will be funded by the Trustees of the New Castle Common. This is approved with the understanding that the City Solicitor provided the following opinion on the matter:

From: Roger Akin [mailto:raa@rabhlaw.com]
Sent: Tuesday, January 26, 2010 4:07 PM
To: Cathryn Thomas
Cc: bbarthel
Subject: Green Project Reserve Loan

Dear Ms. Thomas:

The purpose of this e-mail is to summarize information which I provided to you and Mr. Barthel on the phone yesterday. Please excuse the relative informality of an e-mail which memorializes my advice. Technical difficulties at this end preclude the delivery of a formal letter on our firm's letterhead at this time.

The City has registered an interest in applying for certain ARRA funds made available for three Green Project Reserve undertakings. Because of certain provisions in the City of New Castle Charter, it was deemed necessary to seek the authorization of New Castle residents through a special election in order to borrow a portion of the funds against the full faith and credit of the City.

The voters strongly approved the pertinent borrowing, and in recent weeks and months bids were solicited for the three projects. Previously, the City had been provided with what was assumed to be relatively accurate cost estimates for the three projects. The amount of authority sought in the special election was premised on those estimates. However, after reviewing all of the submitted bids from responsible contractors, it has now been determined that the City will need to borrow an amount of funds which exceeds the amount approved in the special election.

At last report, we are informed that the approximate amount of additional borrowing necessitated by the unexpectedly high bids for the projects is in the vicinity of \$388,000. Pursuant to the terms of the pertinent ARRA loan, 50% of the overall loan, including any additional loan proceeds to cover the project bids, will be "forgiven" by the federal government and DNREC. That is to say that 50% of the loaned funds constitute the rough equivalent of a "grant", and the City will be liable for 50%.

Fifty percent of the excess amount to be loaned is approximately \$194,000. We understand that the City has engaged in discussions with the Trustees with regard to the unanticipated excess amount for which the City would otherwise be liable under the loan agreements. We further understand that the Trustees have given their assurance that it will provide funds to satisfy that excess.

Yesterday we advised that if, prior to or contemporaneous with execution of the ARRA loan documents, the Trustees will execute a written and binding representation or

agreement that it will in essence pay the overage, and indemnify the City in the amount of the overage, then the City's loan exposure will remain at the amount approved by City voters last Fall.

Please do not hesitate to contact me if there are questions regarding this e-mail. We will provide your office with a letter stating the above tomorrow.

Thank you.

Roger Akin

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A motion was made by Councilperson Cochran to enter into Executive Session to discuss a personnel matter. The motion was seconded by Councilperson Petty and was unanimously approved.

Respectfully submitted,

Cathryn Thomas

New Castle City Administrator